

EDWARD E. ELLIS
JENNIE L. ELLIS

IBLA 95-247

Decided April 9, 1998

Appeal of a decision by the Alaska State Office, Bureau of Land Management, denying an exemption from payment of rental fees for seven placer mining claims and declaring the claims abandoned and void. AA-14224 et al.

Reversed.

1. Evidence: Generally--Mining Claims: Abandonment--Mining Claims: Millsites--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A decision rejecting a small miner exemption and declaring mining claims abandoned and void for failure to pay rental fees on the basis that BLM records show that the mining claimants hold more than 10 claims or sites will be reversed if the claimants can establish, on appeal, that any excess claims or sites were abandoned on or before the filing deadline of Aug. 31, 1993.

APPEARANCES: Edward E. Ellis and Jennie L. Ellis, Cooper Landing, Alaska, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Edward E. Ellis and Jennie L. Ellis have appealed a January 12, 1995, Decision by the Alaska State Office, Bureau of Land Management (BLM), denying an exemption from payment of rental fees for seven placer mining claims (AA-14224, AA-54608, AA-51141, AA-060571, AA-060572, AA-51145, and AA-51146) and declaring the claims to be abandoned and void for failure to pay annual rental fees of \$100 per year for the 1992-93 and 1993-94 assessment years on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), Pub. L. No. 102-381, 106 Stat. 1374 (1992). The Decision was stayed by Order dated June 19, 1995.

The record shows that on August 26, 1993, Ellis filed two Certificates of Exemption from Payment of Rental Fees. Each form listed seven claims: the No. 1 Above Crescent (AA-14224), the No. 2 Above Crescent (AA-54608), the Crescent No. 14 (AA-51141), the Crescent No. 14 Bench No. 1 (AA-060571), the Crescent No. 14 Bench No. 2 (AA-060572), the Crescent No. 18 (AA-51145), and the Crescent No. 19 (AA-51146). The Decision on appeal states that individually or jointly the Ellises held an interest in six other claims or sites: the Crescent No. 15 (AA-51142), the Crescent No. 16 (AA-51143), the Crescent No. 20 (AA-51147), the RS&S No. 3 (AA-75674), the RS&S No. 3A (AA-75675), and the RS&S No. 3 Millsite (AA-75676). Due to the ownership of the additional claims, and because of Appellants' failure to respond to a BLM notice to show that BLM's records were in error, BLM denied an exemption and declared the seven claims to be abandoned and void for failure to pay rental fees.

Appellants contend that, on August 31, 1993, they "held a valid possessory interest and right to" only nine mining claims. (Statement of Reasons (SOR) at 2.) In addition to the seven addressed by the Decision, they list two others: AA-75674 and AA-75675, which BLM's Decision showed were jointly owned by Edward Ellis and Sherman Smith.

As to the additional four claims or sites listed in the Decision as owned or partially owned by Appellants, they explain that they "deeded all right, title and interest" in two of those claims, the Crescent Nos. 15 and 16 (AA-51142 and AA-51143), to Jodie Tucker Martin. They provide copies of two quitclaim deeds, dated March 26, 1991, recorded in the Seward Recording District on October 21, 1991, transferring title to those claims. (SOR at 2-3, Exs. 1 and 2.) ^{1/} Regarding the RS&S No. 3 Millsite (AA-75676), Appellants state: "No rental payment was made in 1993 or 1994 and the BLM on 7/1/1994 Deemed the millsite Abandoned and Void and Closed the Casefile back through 1993. No appeal was filed and the millsite was considered by BLM as abandoned and closed for both 1993 and 1994." (SOR at 3.) In support, Appellants provide a copy of BLM's July 1, 1994, Decision declaring AA-75676 abandoned and void. (Ex. 3.)

Finally, as to the fourth claim, Appellants state that they "relinquished all right, title and interest to BLM" in the Crescent No. 20 (AA-51147) on August 26, 1993, "did not perform nor file any required annual labor on the claim for 1994," and "had no interest in the claim August 31, 1993 and after." (SOR at 4.) In support, Appellants provide a copy of a handwritten note from Edward Ellis to BLM, date stamped by BLM on August 26, 1993, which states: "I am dropping claim Crescent No. 20, AA-51147 and have done Annual Labor. This drop is due to meet the 10 claim rule and is made under duress." (Ex. 4.)

^{1/} In addition, in a supplemental filing, Appellants provide the first page of a BLM Decision dated Feb. 6, 1992, finding the Crescent No. 16 (AA-51143) to be abandoned and void for failure to file an affidavit of assessment work. See 43 U.S.C. § 1744(a) (1994).

The relevant provisions of the Act, enacted by Congress on October 5, 1992, provide, in pertinent part, that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. at 1378. A substantially identical provision required mining claimants to also pay by August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill site, or tunnel site during the assessment year beginning September 1, 1993. Id. The legislation provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379.

The Act, however, created an exemption for a mining claimant with 10 or fewer claims who was either producing between \$1,500 and \$800,000 in gross revenues per year or was "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation" and had fewer than 10 acres of unreclaimed surface. Id. at 1378. Such a claimant could "elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. § 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id. The same exemption was allowed for the 1993-94 assessment year. Id. at 1378-79.

[1] The question raised by the appeal is whether the Appellants held 10 or fewer mining claims on August 31, 1993. Appellants are clearly correct that the quitclaim deeds establish that they had conveyed their interests in the Crescent Nos. 15 and 16 (AA-51142 and AA-51143) in 1991 and did not hold them on August 31, 1993.

Appellants are also correct that annual rental payments for the RS&S No. 3 Millsite were not made by August 31, 1993, and that the claim became abandoned and void for that reason, as stated in BLM's July 1, 1994, Decision. The Board has held that, when a mineral claimant seeks to obtain an exemption from rental fees for 10 or fewer mining claims and BLM records show that the claimant holds more than 10 claims, the issue is whether the claimant had abandoned the excess claims.

So long as a claimant who sought a small miner exemption can establish that, with respect to any claim in excess of 10, the elements of abandonment predated August 31, 1993, he or she has met the statutory and regulatory requirements with respect to the limitation of claim ownership, regardless of the point in time at which these facts are communicated to BLM.

The Big Blue Sapphire Co., 138 IBLA 1, 5 (1997); accord Little Bear Mining & Exploration, Inc., 138 IBLA 304, 306 (1997); William J. Montgomery, 138 IBLA 31, 34 (1997); Burbank Gold, Ltd., 138 IBLA 17, 20 (1997). In particular, the Board has looked at whether the claimant subsequently listed the additional claims on an affidavit of assessment work. The affidavit is not an instrument abandoning the claim but is evidence that the claimant had intended to abandon the claim prior to the deadline for paying rental fees. The Big Blue Sapphire Co., *supra*, at 5. The Board has also looked at other documents to determine that parties had intended to abandon mining claims. See Interstate Mining & Development Properties, 141 IBLA 369, 371 (1997) (release); Little Bear Mining & Exploration, Inc., *supra* (minutes of Board of Directors meeting); William J. Montgomery, *supra* (notarized statement).

The difficulty presented in this case is that assessment work is not required for a mill site. Consequently, a mill site would not necessarily be identified in an affidavit filed for the associated lode or placer claim and its omission cannot be given the same significance as with mining claims for which assessment work is required. By regulation, however, the owner of a mill site is required to file a notice of intention to hold the claim "on or before December 30 of the calendar year following the calendar year" of its location. 43 C.F.R. § 3833.2-2(c); see 43 U.S.C. § 1744(a) (1994). Thus, a notice of intention to hold the RS&S No. 3 Millsite would have been due by December 30, 1993, because the site was located in July 1992. The record does not contain any evidence that Appellants filed such a notice, and BLM did not issue a notice of the deficiency. See generally Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). As Appellants point out, they also did not appeal BLM's decision finding the millsite abandoned and void.

Like the omission of a mining claim from a subsequently filed affidavit of assessment work, Appellants' failure to file a notice of intention to hold and their lack of a challenge to BLM's decision supports their contention that they had abandoned the RS&S No. 3 Millsite prior to August 31, 1993, and we so hold.

The original of Ellis' note concerning the Crescent No. 20 (AA-51147) is in the record, and, by notice dated September 21, 1993, BLM informed him that it was accepting his relinquishment of the claim but that its records showed Jennie Ellis to also have an interest and the file would remain open for that reason. An affidavit of assessment work received by BLM on December 23, 1993, identifies the Crescent No. 20, along with the Crescent Nos. 18 and 19, as claims owned by Ellis. Consequently, the Crescent

No. 20 cannot be held to have been abandoned as of August 31, 1993, and BLM correctly determined that it was owned by Jennie Ellis as of that date. The Big Blue Sapphire Co., supra, at 5. 2/

Including the RS&S Nos. 3 and 3A (AA-75674 and AA-75675) and the Crescent No. 20 (AA-51147), the record before the Board shows that Appellants held no more than 10 claims as of August 31, 1993.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the January 12, 1995, Decision of the Alaska State Office is reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

T. Britt Price
Administrative Judge

2/ By Decision dated Nov. 7, 1994, addressed to Jennie and Edward Ellis, BLM declared the Crescent No. 20 and the Crescent No. 16 abandoned and void for failure to file a certificate of exemption or pay rental fees by Aug. 31, 1993.